

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

FCC 03M-02  
01891

In the Matter of	EB Docket No. 02-21
PENINSULA COMMUNICATIONS, INC.	File No. EB 01-IH-0609 FRN: 0001-5712-15
Licensee of stations	
KGTL, Homer, Alaska;	Facility ID Nos. 52152
KXBA(FM), Nikiski, Alaska;	86717
KWVV-FM, Homer, Alaska; and	52145
KPEN-FM, Soldotna, Alaska.	52149
Licensee of FM translator stations	
K292ED, Kachemak City, Alaska	52150
K285DU, Homer, Alaska;	52157
K285EG and K272DG, Seward, Alaska	52158 and 52160
Former licensee of FM translator stations	
K285EF, Kenai, Alaska;	
K283AB, Kenai/Soldotna, Alaska;	
K257DB, Anchor Point, Alaska;	
K265CK, Kachemak City, Alaska;	
K272CN, Homer, Alaska; and	
K274AB and K285AA, Kodiak, Alaska	

**ORDER**

Issued: January 17, 2003

Released: January 21, 2003

A post hearing conference is hereby set for **January 31, 2003, at 9:30 a.m.**<sup>1</sup> to consider receipt in evidence, through official notice, of copies of appellate briefs and reply briefs that have been filed in *Peninsula Communications, Inc. v. Federal Communications Commission*, United States Court of Appeals for the District of Columbia Circuit, Case No. 01-1273.<sup>2</sup>

The appeal was argued and submitted to the Court of Appeals on January 14, 2003.

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<sup>1</sup> The conference may need to be held in the Alternate Hearing Room **TW-402**. Counsel will be advised by this Office if there is a room change.

<sup>2</sup> The parties are filing **Reply** Proposed Findings of Fact and Conclusions of **Law** on January 23, 2003. Should additional comment **be** required to address this new matter, the record will be reopened a reasonable period of time for focused comments and replies.

The Commission brief noted that there is a “*contextual overlap*” in the various Commission proceedings (emphasis supplied). See Commission appellate brief at 17. Both parties have referenced the appeal in their respective Proposed Findings of Fact and Conclusions of Law. Therefore, there appears to be a sufficient nexus. Relevance is the licensee’s state of mind as a specific finding to be made in determining whether there should be any license revocation.

The weight to be accorded the briefs is a question to be discussed at the conference. However, since the fact of the appeal is a part of this record through testimony, and the fact of the appeal has been cited for findings, in the discretion of the Presiding Judge it is deemed conducive to creating a complete hearing record that the related briefs be included in the hearing record as official notice exhibits.

Certainly, there should not be any prejudice to either party in officially noting and placing in this record publicly filed appellate briefs, even as a post hearing matter. To the contrary, there would be a benefit in fully accounting for the procedural history of Peninsula’s licensing since this hearing may be subject to multiple layers of review.

Solely for the purpose of preparation for the conference, Peninsula Communications, Inc. is to provide the Presiding Judge with courtesy copies of its appellate brief and reply brief **by 12 noon on January 27, 2003**, for their in camera review.<sup>3</sup>

Counsel for the parties are to be prepared *to* provide marked copies of the appellate briefs to the court reporter at the conference.<sup>4</sup>

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel  
Chief Administrative Law Judge

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<sup>3</sup> Copies may be made available by e-mail. It is noted that counsel for both parties were told of the interest of the Presiding Judge in seeing Peninsula’s appellate briefing in telephone conference call of January 15, 2003. **At a minimum** fairness to Peninsula, the Presiding **Judge** intends to read its appellate briefs since, as counsel were told, he has already read the Commission brief simply as a matter of keeping informed on public information concerning the Commission. And to assure against there being any erroneous or prejudicial matter, Bureau counsel is reviewing all of the appellate briefs.

<sup>4</sup> The last numbered officially noticed document in this record is marked **ON Exh. 20**.